

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1989

JAMES CONSTANT

Petitioner,

v.

HITACHI AMERICA, LTD., TEXAS INSTRUMENTS,
INC., ANALOG DEVICES, INC., NEC ELECTRO-
NICS, INC., SPENSLEY HORN JUBAS & LUBITZ,
SHEPPARD MULLIN RICHTER & HAMPTON, HOP-
GOOD CALIMAFDE KALIL & BLAUSTEIN, and
ROBERT HILLMAN,

Respondents.

JAMES CONSTANT,

Petitioner,

v.

MARCIAN HOFF, ROBERT HILLMAN, INTEL, INC.,
TEXAS INSTRUMENTS, INC., BLAKELY, SOKOLOFF,
TAYLOR & ZAFMAN, and MAKER SMITH & MILLS,

Respondents.

SUPPLEMENT TO

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

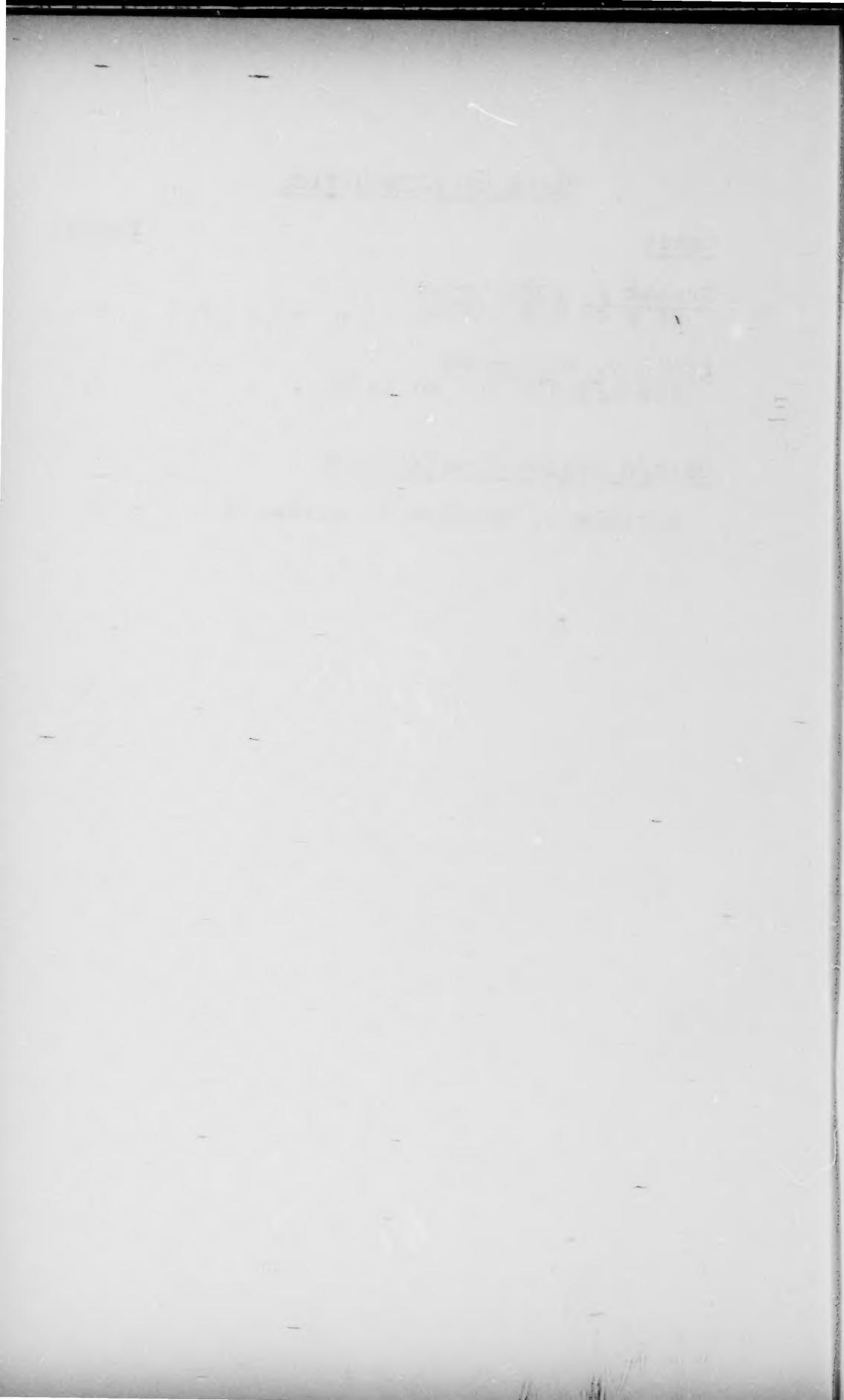
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Pro se petitioner



TABLE OF AUTHORITIES

<u>Cases</u>		<u>Pages</u>
<u>Graham v. John Deere</u> 86 S Ct 684 (1966)		4
<u>Klein v. Whitehead</u> 389 A2d 374 (CA Md 1978)		2,3
<u>United States Constitution</u>		
Article 1, Section 8, Clause 8 .		4



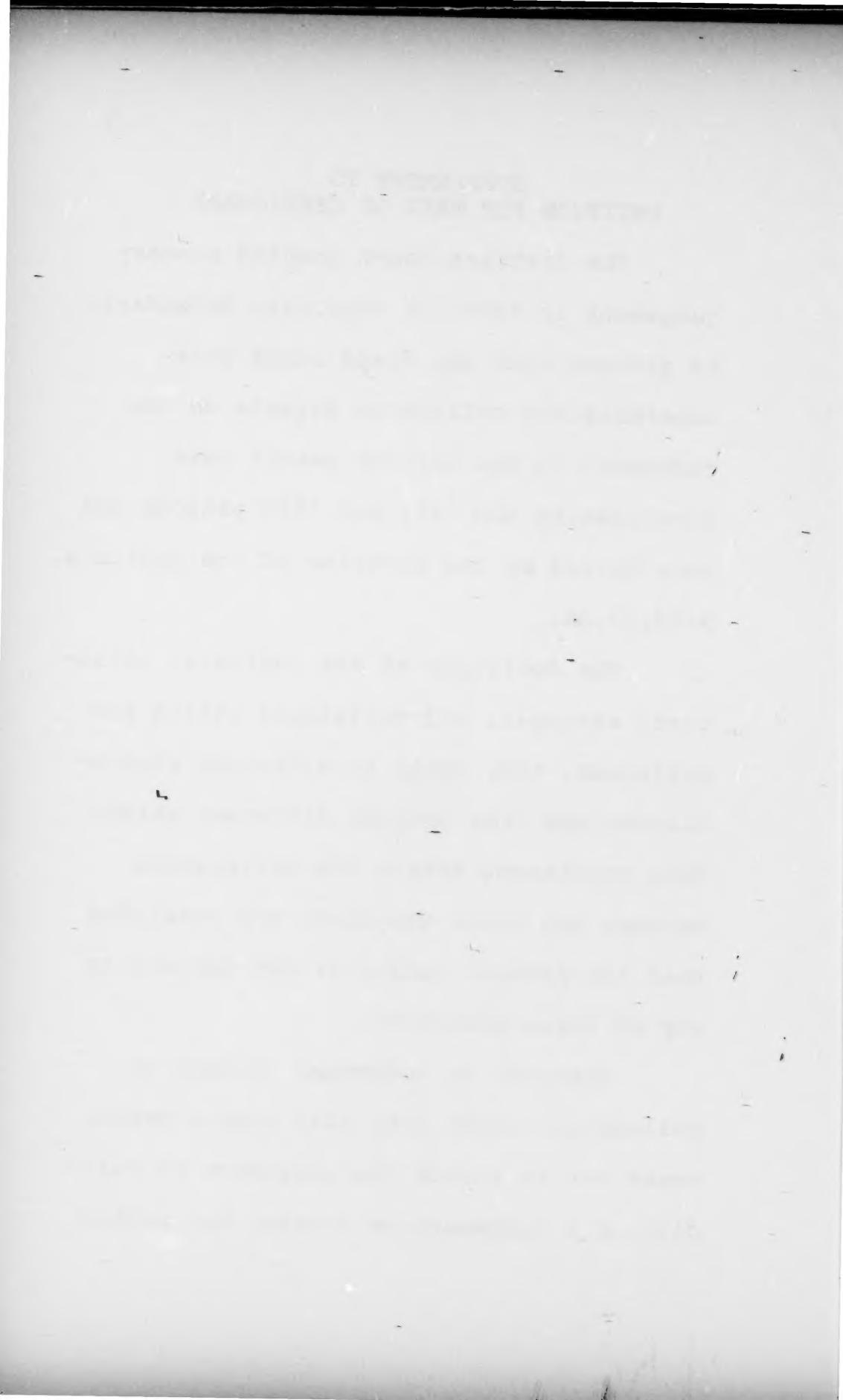
SUPPLEMENT TO
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The district court granted summary judgement in favor of corporate defendants on grounds that the fraud cases were impermissible collateral attacks on the judgement in the earlier patent case invalidating the '491 and '635 patents and were barred by the doctrine of res judicata.

A-22,23,24.

The doctrines of res judicata, collateral estoppel, and collateral attack are different; they apply in different circumstances and they prevent different things. This supplement treats the differences between the three doctrines and concludes that the present action is not subject to any of these doctrines.

Estoppel by judgement (direct or collateral) comes into play when a person seeks not to attack the existence or validity of a judgement or decree, but rather

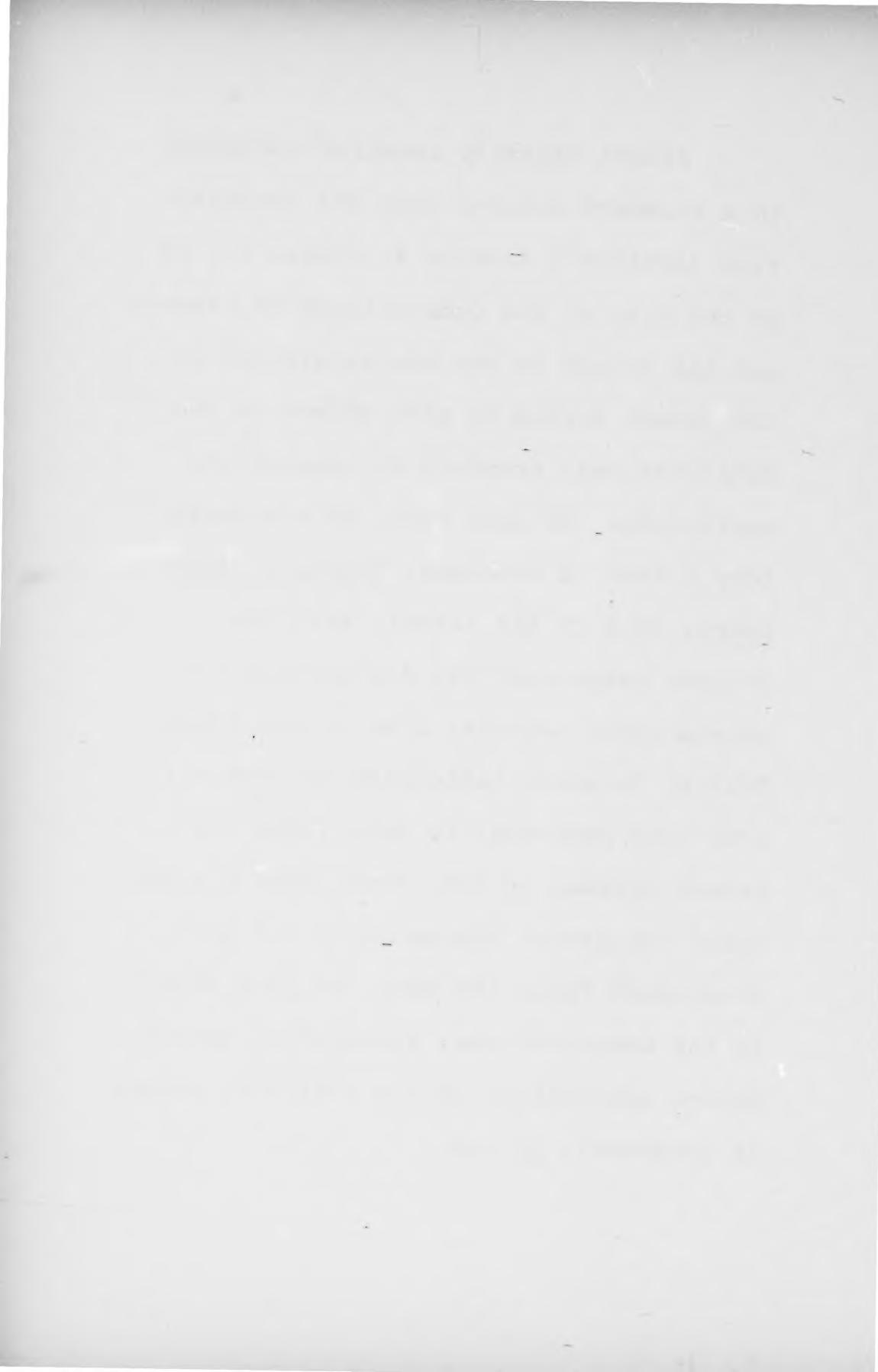


to question the effect of that judgement or decree upon him. Conceding that the judgement exists and is valid, he asserts that it does not apply to or settle the issues sought to be litigated in the subsequent proceeding. If the person was a party to the earlier proceeding, he is bound by the existing judgement and by the adjudications upon which it is based.

Klein v. Whitehead, 389 A2d 374 (CA Md 1978) 386-387. In the present case, the lower courts reached the wrong result because petitioner seeks to attack the validity of the earlier judgement (A-22) for which the doctrines of estoppel by judgement (direct or collateral) do not apply. Thus, to the extent the decisions below rely on the doctrines of res judicata or collateral estoppel they are in error.

The doctrine of "collateral attack", on the other hand, prevents a person from challenging the validity of the existing judgement itself rather than merely its scope or effect. Id 384,386-387. However, there is an exception to the rule depending whether the person seeking to attack the existing judgement was a party or a stranger to the proceeding from which it arose. Id 387. In the present case, petitioner introduced two letters by Hillman to defendant's counsel in the earlier patent case and a letter from that counsel to Judge Wilson before Hillman's appointment (Exhibits B,C,D in complaint) as evidence from which the court could have concluded that the actions of respondents in prosecuting the patent case amounted to a fraud upon the petitioner and upon the Government.

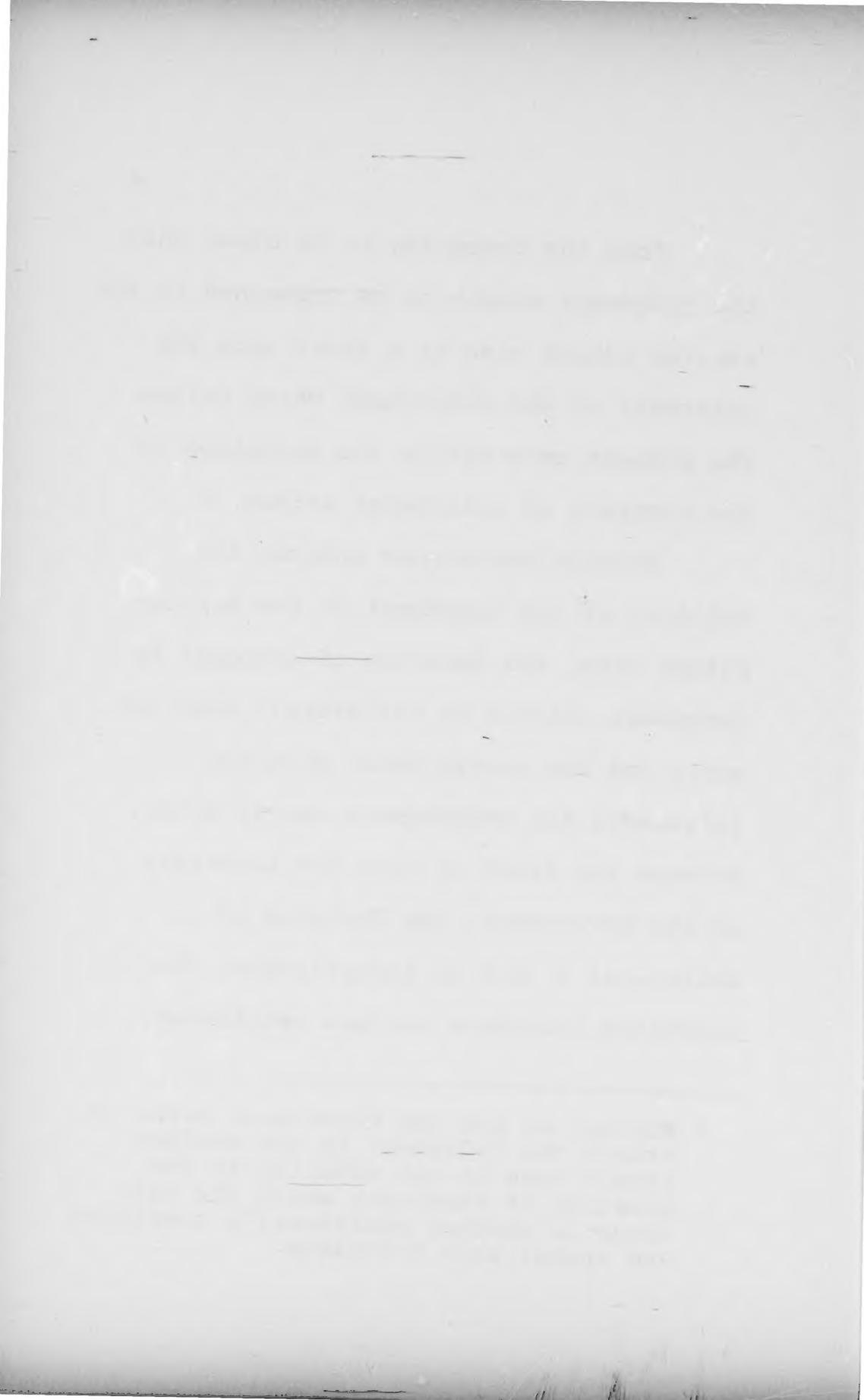
Patent validity requires reference to a standard written into the Constitution (Article 1 Section 8, Clause 8). It is the duty of the Commissioner of Patents and the courts in the administration of the patent system to give effect to the Constitutional standard by appropriate application, in each case, of the statutory scheme of Congress. Graham v. John Deere, 86 S Ct 684 (1966), 688. The primary responsibility for sifting out unpatentable material lies in the Patent Office. To await litigation is, for all practical purposes, to debilitate the patent system. Id 694. Thus, when a patent fails the patent system fails and the Government fails its duty "to give effect to the Constitutional standard by appropriate application of the statutory scheme of Congress". Id 688.



From the foregoing it is clear that the judgement sought to be impeached in the earlier patent case is a fraud upon the interests of the Government which brings the present case within the exception of the doctrine of collateral attack. *

Because petitioner attacks the validity of the judgement in the earlier patent case, the doctrine of estoppel by judgement (direct or collateral) does not apply and the courts below entering judgements for respondents was in error. Because the fraud is upon the interests of the Government, the doctrine of collateral attack is inapplicable. The sanctions therefore against petitioner,

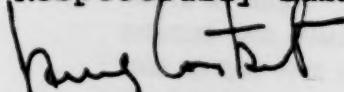
* Whether or not the Government seeks to attack the judgement in the earlier patent case is not material to the question of sanctions where the sole issue is whether petitioner's complaint and appeal were frivolous



on grounds the complaint and appeal were frivolous, are without foundation.

For the reasons herein and in the original petition, petitioner James Constant respectfully requests that a writ of certiorari issue to review the order for sanctions of the United States Court of Appeals for the Federal Circuit in APPENDIX A-31.

Respectfully submitted



10/9/89

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CERTIFICATE OF SERVICE

I certify that the foregoing
PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE
FEDERAL CIRCUIT and APPENDIX were
served on all parties by mailing first
class three (3) true copies to each of
them on 9 October, 1989 addressed
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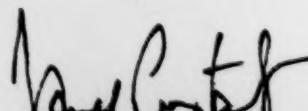


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I declare under penalty of
perjury that the foregoing is true
and correct.

Executed on 9 October,
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